

**UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION**

IN RE:	)	
	)	
Deleanor Tyrone Clay	)	Case No. 09-82091 C-13D
Charlene Hughes Clay	)	Chapter 13
	)	
Debtors.	)	
<hr style="width:30%; margin-left:0"/>	)	

**OBJECTION TO CONFIRMATION**

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CitiFinancial Auto, Ltd. (hereinafter "CitiFinancial Auto"), a creditor in the above-captioned proceeding, hereby objects, pursuant to Sections 1322 and 1325 of the Bankruptcy Code and Rule 3015 of the Federal Rules of Bankruptcy Procedure, to confirmation of the Debtor's Plan. In support of this Objection, CitiFinancial Auto respectfully shows unto this Court as follows:

1. The above referenced Debtors (hereinafter "Debtors") filed a petition under Chapter 13 of the Bankruptcy Code on November 24, 2009 (the "Petition Date").
2. CitiFinancial Auto possesses a secured claim against the Debtors.
3. On or about June 11, 2007, less than 910 days before the Petition Date, RPM Lincoln Mercury loaned to Deleanor Tyrone Clay and Charlene Hughes Clay the principal sum of \$36,622.00, and, as evidence of the obligation to repay such amount to RPM Lincoln Mercury, Deleanor Tyrone Clay and Charlene Hughes Clay executed and delivered to RPM Lincoln Mercury a Retail Installment Sale Contract (hereinafter "Agreement"), dated June 11, 2007, in the original, principal amount of \$36,622.00. The Agreement provides for monthly payments in the amount of \$718.83. A true and correct copy of the Agreement is attached hereto as Exhibit A and incorporated herein by reference.
4. RPM Lincoln Mercury assigned the Agreement to CitiFinancial Auto.

5. As security for the indebtedness owed to CitiFinancial Auto, Deleanor Tyrone Clay and Charlene Hughes Clay granted to CitiFinancial Auto a security interest in a 2007 Mercury Montego, Serial Number 1MEHM40167G607673 (hereinafter "2007 Mercury Montego"). CitiFinancial Auto perfected its security interest by placing a lien against the title to the 2007 Mercury Montego as evidenced by a notation of a first lien on the Certificate of Title. A true and correct copy of the Certificate of Title is attached hereto as Exhibit B and incorporated herein by reference.

6. As of Petition Date, Deleanor Tyrone Clay and Charlene Hughes Clay were indebted to CitiFinancial Auto in the principal amount of \$29,903.54 as provided by the Agreement, plus interest, late charges and other applicable fees.

7. The Debtors' Chapter 13 Plan values the 2007 Mercury Montego at \$12,015.00.

8. The Agreement represented purchase money financing for the 2007 Mercury Montego<sup>1</sup>, the debt arising under the Agreement was incurred less than 910 days before the Petition Date and, upon information and belief, the 2007 Mercury Montego was purchased for the personal use of the Debtors. Therefore, the Debtors cannot move to value the 2007 Mercury Montego and must pay CitiFinancial Auto's claim in full. 11 U.S.C. § 1325(a) (hanging paragraph after § 1325(a)(9)). *See In re Brooks*, 344 B.R. 417 (Bankr. E.D.N.C. 2006); *In re Johnson*, 337 B.R. 269, 273 (Bankr. M.D.N.C.) ("Section 1325(a)(9) prevents purchase money security loans on vehicles purchased for the personal use of the debtor within 910 days of the filing of the petition from being stripped down in a Chapter 13 plan.").

9. CitiFinancial Auto submits that the Debtors cannot value its secured claim and must pay the secured claim in full. The payoff balance under the Agreement as of the Petition Date was \$29,903.54. Therefore, the Debtors must provide treatment for a secured claim held by CitiFinancial Auto in the amount of \$29,903.54.

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<sup>1</sup> Although the Agreement included the financing of negative equity from a trade-in vehicle, the financing represents purchase money financing for the 2007 Mercury Montego. *In re Price*, 562 F.3d 618 (4<sup>th</sup> Cir. 2009).

10. The Debtors' Plan cannot be confirmed over CitiFinancial Auto's objection. The Debtors must either amend the Plan to provide CitiFinancial Auto with a fully secured claim in the amount of \$29,903.54 as of the Petition Date with interest at an acceptable rate or surrender the 2007 Mercury Montego to CitiFinancial Auto. Otherwise, the Court must deny confirmation of the Debtors' Plan.

WHEREFORE, CitiFinancial Auto respectfully prays unto this Court as follows:

1. That the Court deny confirmation of the Debtors' Plan and deny the Debtors' motion to value the 2007 Mercury Montego;

2. That the Court require the Debtors to provide treatment for CitiFinancial Auto's claim as a fully secured claim, together with interest at an acceptable rate, or require the Debtors to surrender the 2007 Mercury Montego to CitiFinancial Auto; and

3. For such other and further relief as to the Court may seem proper.

Respectfully submitted, today, February 16, 2010.

/S/ James E. Vaughan

James E. Vaughan

North Carolina Bar No. 12669

*Attorney for CitiFinancial Auto, Ltd.*

OF COUNSEL:

**JAMES E. VAUGHAN, ATTORNEY AT LAW, P.C.**

206 North Spruce Street, Suite 2A

Winston-Salem, North Carolina 27101

Telephone: (336) 725-7772

Facsimile: (336) 725-7737

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_____	)	

**DISCLOSURE OF CORPORATE PARENT**

CitiFinancial Auto, Ltd. is a wholly owned subsidiary of Associates First Capital Corporation, a Delaware Corporation, which is a wholly owned subsidiary of Citigroup, Inc., a publicly traded company.

Dated: February 16, 2010.

/S/ James E. Vaughan

James E. Vaughan

North Carolina Bar No. 12669

*Attorney for CitiFinancial Auto, Ltd.*

OF COUNSEL:

**JAMES E. VAUGHAN, ATTORNEY AT LAW, P.C.**

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## **CERTIFICATE OF SERVICE**

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I hereby certify that copies of the foregoing **OBJECTION TO CONFIRMATION and DISCLOSURE OF CORPORATE PARENT** were served upon the following parties by mailing such copy by first class, postage prepaid mail, addressed as follows:

**ADDRESSEES:**

Deleanor Tyrone Clay  
Charlene Hughes Clay  
2 Whistler Woods Court  
Durham, NC 27703

**Notice electronically sent to:**

John T. Orcutt, Esq.  
postlegal@johnorcutt.com

Richard M. Hutson, II, Esq.  
office@c13dur.com

Dated: February 16, 2010.

/S/ James E. Vaughan

James E. Vaughan  
North Carolina Bar No. 12669  
*Attorney for CitiFinancial Auto, Ltd.*

**OF COUNSEL:**

**JAMES E. VAUGHAN, ATTORNEY AT LAW, P.C.**

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